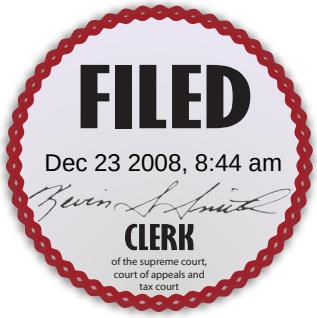

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IN THE
COURT OF APPEALS OF INDIANA

STEPHEN J. MALLORY JR.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A04-0809-CR-542
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Frances C. Gull, Judge
Cause No. 02D04-0801-FB-20

December 23, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Defendant Stephen Mallory Jr. appeals following his conviction for Class B felony Robbery[1] for which he received a twenty-year sentence in the Department of Correction. Upon appeal, Mallory challenges the sufficiency of the evidence to support his conviction and claims that his sentence is inappropriate. We affirm.

FACTS AND PROCEDURAL HISTORY

On January 19, 2008, eighty-six-year-old Marjorie Motherwell was seated in the passenger seat of her vehicle at 704 Rockhill Street in Fort Wayne, where her son Joseph, who had been driving her, had briefly stopped to attend to some errands. As Motherwell waited for Joseph, a black male whom Motherwell later identified to be Mallory approached the passenger's side of the vehicle. Mallory, who was wearing black winter gloves, tapped on the window and asked Motherwell for the time by gesturing at his wrist. Motherwell told Mallory that it was 1:30 p.m. Mallory stepped back, out of Motherwell's view, but returned shortly thereafter. As Mallory again asked for the time, he pulled out a red-and-amber-colored screwdriver. Sneering at Motherwell and wielding the screwdriver inches from her head and face, Mallory tried to pry open the passenger-side window. Mallory ultimately used the screwdriver to break the window, causing the glass to shatter on Motherwell. Mallory grabbed Motherwell's purse and ran off.

During the weeks prior to the robbery, Mallory, who was known as "Dave," was staying at Monty Wells's apartment at 1309 High Street. Shortly after the robbery, Wells found Motherwell's purse underneath some laundry at his apartment. Wells asked his friends Aaron Phovemire and Melody Gardner to "take care" of the purse. Tr. p. 229.

[1] Ind. Code § 35-42-5-1 (2007).

On January 21, 2008, Phovemire, Gardner, and their acquaintance, Thomas Pflueger, brought the purse to Motherwell at her home. Most of Motherwell's identification cards were still inside her purse, but her Chase credit card, keys, and cash were missing.

Joseph subsequently went to the High Street apartment and requested permission to search it, which Wells gave him. Inside the apartment Joseph found Motherwell's keys, as well as black winter gloves, and a screwdriver resembling the one used in the robbery.

On January 25, 2008, the State charged Mallory with Class B felony robbery. During Mallory's April 15-16, 2008 jury trial, Motherwell identified Mallory as her assailant, and Fort Wayne Police Detective Craig Gregory testified that Motherwell had previously identified Mallory in a photographic lineup. The jury found Mallory guilty as charged. On May 19, 2008, the trial court entered judgment of conviction and sentenced Mallory to a maximum sentence of twenty years in the Department of Correction. This appeal follows.

DISCUSSION AND DECISION

I. Sufficiency of the Evidence

Upon appeal, Mallory first claims that there was insufficient evidence to support his conviction by arguing that the evidence was inadequate to implicate him as the perpetrator of the robbery. Our standard of review for sufficiency-of-the-evidence claims is well-settled. We do not reweigh the evidence or judge the credibility of the witnesses. *Kien v. State*, 782 N.E.2d 398, 407 (Ind. Ct. App. 2003), *trans. denied*. We consider only the evidence which supports the conviction and any reasonable inferences which the trier

of fact may have drawn from the evidence. *Id*. We will affirm the conviction if there is substantial evidence of probative value from which a reasonable trier of fact could have drawn the conclusion that the defendant was guilty of the crime charged beyond a reasonable doubt. *Id*. It is the function of the trier of fact to resolve conflicts of testimony and to determine the weight of the evidence and the credibility of the witnesses. *Jones v. State*, 701 N.E.2d 863, 867 (Ind. Ct. App. 1998). A conviction may rest upon the uncorroborated testimony of the victim. *Ludy v. State*, 784 N.E.2d 459, 461 (Ind. 2003).

Mallory's challenge to the adequacy of the evidence identifying him as the perpetrator is merely an invitation to reweigh the evidence, which we decline to do. Motherwell, who was essentially face-to-face with her assailant, identified him to be Mallory both in a photographic lineup and at trial. In addition, Motherwell's stolen purse and keys, and black gloves like those worn by the robber, were found at the apartment where Mallory was staying. Mallory's challenge to the adequacy of the evidence to identify him as the perpetrator is without merit.

II. Sentencing

Mallory further challenges the appropriateness of his twenty-year sentence. Article VII, Sections 4 and 6 of the Indiana Constitution "'authorize[] independent appellate review and revision of a sentence imposed by the trial court.'" *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007) (quoting *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006) (emphasis and internal quotations omitted)). Such appellate authority is implemented through Indiana Appellate Rule 7(B), which provides that the "Court may

revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." We exercise deference to a trial court's sentencing decision, both because Rule 7(B) requires that we give "due consideration" to that decision and because we recognize the unique perspective a trial court has when making sentencing decisions. *Stewart v. State*, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). It is the defendant's burden to demonstrate that his sentence is inappropriate. *Childress*, 848 N.E.2d at 1080.

We are convinced that Mallory's maximum twenty-year sentence is appropriate. Regarding the nature of this offense, Mallory thrust a screwdriver at a lone eighty-six-year-old woman's head, broke her window, shattered glass onto her person, and ran off with her purse. The vulnerability of this victim and Mallory's acts in the face of such vulnerability are disturbing.

To the extent that Mallory's character is not fully apparent from the above acts, his criminal history similarly demonstrates his lack of moral character. As the trial court observed, Mallory has accumulated eight prior felony convictions in Illinois for which he has served multiple sentences in the Illinois Department of Correction. These convictions include four burglaries, two of which included possession of a stolen motor vehicle, two thefts, one robbery, and one conviction for possession of a controlled substance. In addition, Mallory has two misdemeanor convictions in Indiana. The instant offense highlights Mallory's ongoing disregard for other people and their property and demonstrates that he remains unwilling, despite frequent contact with the criminal

justice system, to conform his conduct to the law. Accordingly, we conclude that his maximum twenty-year sentence is appropriate.

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and MAY, J., concur.